

(1) The designated agency determines that it has jurisdiction over the complaint under title II and that neither the EEOC nor a section 504 agency (other than the designated agency, if the designated agency is also a section 504 agency) has jurisdiction over the complaint; or

(2) The designated agency determines that it has jurisdiction over the complaint under section 504 and the complaint meets the requirements for processing by a section 504 agency set forth in § 37.8(a)(2).

(b) *Referral by a designated agency.* A designated agency that has jurisdiction over a complaint solely under title II (and not under section 504) shall forward a complaint that has been filed with it and with the EEOC, a section 504 agency, or both, to either the EEOC or to a section 504 agency, as follows:

(1) If the designated agency determines that the EEOC is the sole agency, other than the designated agency, with jurisdiction over the complaint, the designated agency shall forward the complaint to the EEOC for processing under title I; or

(2) If the designated agency determines that the section 504 agency is the sole agency, other than the designated agency, with jurisdiction over the complaint, the designated agency shall forward the complaint to the section 504 agency for processing under section 504; or

(3) If the designated agency determines that both the EEOC and a section 504 agency have jurisdiction over the complaint, the designated agency shall forward the complaint to the EEOC if it determines that the complaint solely alleges employment discrimination against an individual, or it shall forward the complaint to the section 504 agency if it determines that the complaint meets the requirements for processing by a section 504 agency set out in § 37.8(a)(2)(i) or (a)(2)(ii).

**§ 37.10 Section 504 agency review of deferred complaints.**

(a) *Deferral by the section 504 agency.* When a section 504 agency refers a complaint to the EEOC pursuant to § 37.6(c)(2) or when it is determined that, as between the EEOC and a section 504 agency, the EEOC is the agen-

cy that shall process a dual-filed complaint or charge under § 37.8(a)(1) or § 37.8(e), the section 504 agency shall defer further action until:

(1) The EEOC issues a no cause finding and a notice of right-to-sue pursuant to 29 CFR 1601.19; or

(2) The EEOC enters into a conciliation agreement; or

(3) The EEOC issues a cause finding and a notice of failure of conciliation pursuant to 29 CFR 1601.21, and:

(i) If the recipient is not a government, governmental agency, or political subdivision, the EEOC completes enforcement proceedings or issues a notice of right-to-sue in accordance with 29 CFR 1601.28; or

(ii) If the recipient is a government, governmental agency, or political subdivision, the EEOC refers the charge to the Civil Rights Division in accordance with 29 CFR 1601.29, and the Civil Rights Division completes enforcement proceedings or issues a notice of right-to-sue in accordance with 29 CFR 1601.28(d); or

(4) The EEOC or, when a case has been referred pursuant to 29 CFR 1601.29, the Civil Rights Division, otherwise resolves the charge.

(b) *Notification of the deferring agency.* The EEOC or the Civil Rights Division, as appropriate, shall notify the agency that has deferred processing of the charge upon resolution of any dual-filed complaint or charge.

(c) *Agency review.* After receipt of notification that the EEOC or the Civil Rights Division, as appropriate, has resolved the complaint or charge, the agency shall promptly determine what further action by the agency is warranted. In reaching that determination, the agency shall give due weight to the findings and conclusions of the EEOC and to those of the Civil Rights Division, as applicable. If the agency proposes to take an action inconsistent with the EEOC's or the Civil Rights Division's findings and conclusions as to whether a violation has occurred, the agency shall notify in writing the Assistant Attorney General, the Chairman of the EEOC, and the head of the EEOC office that processed the complaint. In the written notification, the agency shall state the action that it

proposes to take and the basis of its decision to take such action.

(d) *Provision of information.* Upon written request, the EEOC or the Civil Rights Division shall provide the section 504 agency with any materials relating to its resolution of the charge, including its findings and conclusions, investigative reports and files, and any conciliation agreement.

**§ 37.11 EEOC review of deferred charges.**

(a) *Deferral by the EEOC.* When it is determined that a section 504 agency is the agency that shall process a dual-filed complaint or charge under § 37.8(a)(2) or § 37.8(e), the EEOC shall defer further action until the section 504 agency takes one of the following actions:

- (1) Makes a finding that a violation has not occurred;
- (2) Enters into a voluntary compliance agreement;
- (3) Following a finding that a violation has occurred, refers the complaint to the Civil Rights Division for judicial enforcement and the Civil Rights Division resolves the complaint;
- (4) Following a finding that a violation has occurred, resolves the complaint through final administrative enforcement action; or
- (5) Otherwise resolves the charge.

(b) *Notification of the EEOC.* The section 504 agency shall notify the EEOC upon resolution of any dual-filed complaint or charge.

(c) *Agency review.* After receipt of notification that the section 504 agency has resolved the complaint, the EEOC shall promptly determine what further action by the EEOC is warranted. In reaching that determination, the EEOC shall give due weight to the section 504 agency's findings and conclusions. If the EEOC proposes to take an action inconsistent with the section 504 agency's findings and conclusions as to whether a violation has occurred, the EEOC shall notify in writing the Assistant Attorney General, the Chairman of the EEOC, and the head of the section 504 agency that processed the complaint. In the written notification, the EEOC shall state the action that it proposes to take and the basis of its decision to take such action.

(d) *Provision of information.* Upon written request, the section 504 agency shall provide the EEOC with any materials relating to its resolution of the complaint, including its conclusions, investigative reports and files, and any voluntary compliance agreement.

**§ 37.12 Standards.**

In any investigation, compliance review, hearing or other proceeding, the standards used to determine whether section 504 has been violated in a complaint alleging employment discrimination shall be the standards applied under title I of the ADA and the provisions of sections 501 through 504, and 510, of the ADA, as such sections relate to employment. Section 504 agencies shall consider the regulations and appendix implementing title I of the ADA, set forth at 29 CFR part 1630, and case law arising under such regulations, in determining whether a recipient of Federal financial assistance has engaged in an unlawful employment practice.

**§ 37.13 Agency specific memoranda of understanding.**

When a section 504 agency amends its regulations to make them consistent with title I of the ADA, the EEOC and the individual section 504 agency may elect to enter into a memorandum of understanding providing for the investigation and processing of complaints dual filed under both section 504 and title I of the ADA by the section 504 agency.

**PART 39—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE**

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